

STATEMENT OF THE CASE

Appellant-Defendant, Monique Nelson (Nelson), appeals her conviction for Count I, theft, a Class D felony, Ind. Code § 35-43-4-2.

We affirm.

ISSUE

Nelson raises one issue for our review, which we restate as: Whether the State presented sufficient evidence to prove beyond a reasonable doubt that she committed theft, a Class D felony.

FACTS AND PROCEDURAL HISTORY

On February 23, 2008, Tina O’Gara (O’Gara) was working at Big Al’s Auto Sales (Big Al’s) in Indianapolis, Indiana. While working, O’Gara received a series of three phone calls from Nelson. Each time, Nelson indicated that she was calling on behalf of a friend, Javonna Garrett (Garrett), regarding Garrett’s dissatisfaction with a vehicle that she had recently purchased from Big Al’s.

Approximately fifteen minutes after the third phone call, Nelson, Garrett, and their children arrived at Big Al’s where the two women confronted O’Gara in her office. Nelson began yelling at O’Gara before grabbing a file out of O’Gara’s hand. The file contained Big Al’s record of the vehicle that Garrett had purchased, including the vehicle’s title. While taking the file from O’Gara’s hand, Nelson grabbed O’Gara’s shirt and “flung [her] across the desk.” (Transcript p. 6). As a result of the incident, O’Gara’s shirt was torn, her neck

was scratched, and her shoulder was dislocated. O’Gara asked that she return the file, but Nelson refused.

As O’Gara called 911, Nelson, with file in hand, ran out to the parking lot with Garrett and their children, and drove away in Nelson’s car. Officer Eric Strange (Officer Strange) of the Indianapolis Metropolitan Police Department arrived at Big Al’s and generated a report based on O’Gara’s account of the incident. Later, Nelson’s mother brought a card to O’Gara containing an apology from Nelson “for physically and verbally attacking [her].” (Tr. p. 10).

Later that same day, Nelson and Garrett reported to police that Garrett’s vehicle was stolen while it was in the care of a mechanic. The mechanic was told by a representative of Big Al’s not to release the vehicle. The officer investigating the reported auto theft contacted Officer Strange after the vehicle was linked to Big Al’s. At Officer Strange’s request, the officer asked Nelson and Garrett to go home to retrieve the paperwork for the vehicle. Officer Strange escorted O’Gara to where Nelson and Garrett were located. While sitting in Officer Strange’s patrol car, O’Gara identified Nelson as the person who had assaulted her. Nelson provided Officer Strange with the paperwork for the vehicle, which O’Gara then identified as the paperwork that Nelson had taken from Big Al’s earlier that day.

On February 26, 2008, the State filed an Information charging Nelson with: Count I, theft, a Class D felony, I.C. § 35-43-4-2; Count II, battery, a Class A misdemeanor, I.C. § 35-42-2-1; and Count III, criminal mischief, a Class B misdemeanor, I.C. § 35-43-1-2. On May 29, 2008, the trial court conducted a bench trial. At the trial, the State presented O’Gara and Officer Strange as witnesses. At the conclusion of the evidence, the trial court found Nelson

guilty of theft and battery, and not guilty of criminal mischief. On July 10, 2008, the trial court sentenced Nelson to 545 days with 180 days executed in the Department of Correction and 365 days suspended for the theft, and 365 days suspended for the battery. The trial court awarded Nelson credit for two actual days served.

Nelson now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Nelson does not appeal the trial court's finding of guilt on the battery count, but argues that the State did not present sufficient evidence to sustain her conviction for theft beyond a reasonable doubt. Specifically, she argues that the evidence presented at trial failed to establish that the file taken was the property of Big Al's.

Our standard of review with regard to sufficiency claims is well settled:

In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. A conviction may be based upon circumstantial evidence alone. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense.

Perez v. State, 872 N.E.2d 208, 212-213 (Ind. Ct. App. 2007), *trans. denied* (citations omitted).

Indiana Code section 35-43-4-2 provides: "A person who knowingly or intentionally exerts unauthorized control over property of another person with intent to deprive the other person of any part of its value or use, commits theft, a Class D felony." Thus, to convict

Nelson of theft as a Class D felony, the State needed to prove that she knowingly or intentionally exerted unauthorized control over Big Al's file with intent to deprive Big Al's of any part of its value or use.

Nelson first argues that the State provided no evidence to show that O'Gara was testifying on behalf of Big Al's. However, O'Gara's own testimony provided that Big Al's was her brother's business, that she had previously managed Big Al's on a full-time basis, and that at the day of the trial, she was "part-time." (Tr. p. 5) Likewise, O'Gara testified that she was working in Big Al's office on the day of the incident. Furthermore, in response to State questioning, O'Gara confirmed that she was a "representative of Big Al's" with a "right" to have the file and its contents in her possession. (Tr. p. 7). Based on this testimony, it was reasonable for the trial court to conclude that O'Gara was testifying as both an employee and representative of Big Al's.

Nelson also argues that because the State did not introduce the actual file or its contents into evidence at trial, O'Gara's testimony alone was insufficient to show that the documents belonged to Big Al's. However, "[i]n order to prove theft, it is not required that the State introduce into evidence the physical object of the theft charged." *Rutledge v. State*, 452 N.E.2d 1039, 1044 (Ind. Ct. App. 1983). Although the State did not introduce the file and its contents at trial, the trial court's finding that the file belonged to Big Al's was supported by sufficient evidence in the form of witness testimony. Specifically, O'Gara, an employee of Big Al's, testified as to the contents of the file, and confirmed that the paperwork Nelson had provided Officer Strange was the same paperwork that Nelson had

taken from Big Al's office. Based on this testimony, it was reasonable for the trial court to conclude that the file and its contents belonged to Big Al's.

In sum, based on the evidence before us, it was reasonable for the trial court to conclude beyond a reasonable doubt that Nelson committed theft.

CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to convict Nelson of theft.

Affirmed.

DARDEN, J., and VAIDIK, J., concur.